



Colorado
Legislative
Council
Staff

HB16-1216

REVISED
FISCAL NOTE

(replaces fiscal note dated February 22, 2016)

FISCAL IMPACT: State Local Statutory Public Entity Conditional No Fiscal Impact

Drafting Number: LLS 16-0248
Prime Sponsor(s): Rep. McCann
Sen. Steadman

Date: April 13, 2016
Bill Status: House Appropriations
Fiscal Analyst: Amanda Hayden (303-866-4918)

BILL TOPIC: INDEPENDENT ETHICS COMMISSION

Fiscal Impact Summary	FY 2016-2017	FY 2017-2018
State Revenue	Potential increase.	
State Expenditures	<u>\$66,556</u>	<u>\$81,182</u>
General Fund	38,325	50,642
Centrally Appropriated Costs	28,231	30,540
FTE Position Change	0.4 FTE	0.5 FTE
Appropriation Required:	\$209,343 - IEC (FY 2016-17); (171,018) - Department of Law (FY 2016-17).	
Future Year Impacts:	Ongoing increase and decrease in state expenditures.	

This fiscal note has been updated to reflect new information.

Summary of Legislation

This bill, **as amended by the House Judiciary Committee**, amends statutes related to the authority and administration of the Independent Ethics Commission (IEC). Specifically, the bill:

- requires the IEC to employ or retain independent legal counsel;
- requires IEC staff to investigate and prosecute complaints alleging ethics violations, specifying that the same attorney cannot prosecute a complaint and advise the IEC with respect to its adjudication of the same or a related complaint;
- defines the process for rulemaking by the IEC, including provisions to hold the IEC to statutory rulemaking standards but remove the IEC from legislative rules review;
- requires the IEC to adopt rules within 180 days of the effective date of the bill governing its own members in matters where a conflict of interest requires recusal and restricting involvement with political activity while serving on the IEC;
- amends the definition of individuals covered by ethics statutes to align with Article XXIX of the Colorado Constitution;
- provides for a financial penalty, censure, or reprimand when the IEC finds a breach of the public trust for private gain; and
- clarifies that the IEC is not required to adhere to advisory opinions issued by the Board of Ethics for the General Assembly.

Background

State Code of Ethics. The state Code of Ethics enumerates rules of conduct applicable to government officers and employees. These rules are deemed to be fiduciary duties to the public. Local district attorneys are expressly authorized to enforce the Code of Ethics in a civil action against officials or employees that breach rules.

Independent Ethics Commission. The IEC was created by Amendment 41, a statewide initiated measure in 2006, found in Article XXIX of the Colorado Constitution. The IEC was originally situated in the Department of Personnel and Administration, but was reorganized in 2010 as an independent agency within the Judicial Branch. The IEC takes action involving either state or local government officials and employees. The Department of Law currently provides legal services for the IEC.

Board of Ethics for the Executive Branch. The Board of Ethics for the Executive Branch was enacted in 1988 and was active for close to two decades. The last appointment to this board was in 2006. While the board still exists in statute, it is inactive and generally assumed to have been superceded by the Independent Ethics Commission.

Board of Ethics for the General Assembly. Under current law, the four-member Board of Ethics for the General Assembly is empowered to issue advisory opinions regarding the conduct of members of the General Assembly and the Code of Ethics. This board is active but meets only as needed.

State Revenue

The bill may increase state revenue by a minimal amount. By specifying penalties for which a local official or employee is liable to a state agency, including double damages, the bill may increase the damages recovered in ethics cases. The number of ethics cases with monetary penalties is expected to be small. Revenue from damage awards is exempt from TABOR and credited to the General Fund.

Assumptions

The fiscal note makes the following assumptions:

- the IEC will be able to hire two part-time senior level attorneys—one to assist with prosecutions and the other to assist with the IEC's advisory function;
- changes to procedures for investigation and prosecution of complaints will increase the number of complaints filed, and between one and three complaints per year will be ruled non-frivolous; and
- based on current capacity and complaint volume, the increased workload associated with investigating and prosecuting additional complaints can be accomplished by the Executive Director and two part-time attorneys.

State Expenditures

The bill increases state General Fund expenditures by \$66,556 in FY 2016-17 and by \$81,182 in FY 2017-18. The bill increases expenditures in the IEC by \$237,574 and 1.4 FTE in FY 2016-17 and by \$252,200 and 1.5 FTE in FY 2017-18. The bill reduces expenditures by \$171,018 and 1.0 FTE starting in FY 2016-17 in the Department of Law. These costs and savings are shown in Table 1 and explained below.

Table 1. Expenditures Under HB16-1216		
Cost Components	FY 2016-17	FY 2017-18
IEC	\$237,574	\$252,200
Personal Services	\$187,215	\$204,235
FTE	1.4 FTE	1.5 FTE
Operating Expenses and Capital Outlay Costs	6,128	1,425
Investigator Services	16,000	16,000
Centrally Appropriated Costs*	28,231	30,540
Department of Law	(\$171,018)	(\$171,018)
Personal Services	(\$153,915)	(\$153,915)
FTE	(1.0 FTE)	(1.0 FTE)
Operating Expenses	(17,103)	(17,103)
TOTAL	\$66,556	\$81,182

**Centrally appropriated costs are not included in the bill's appropriation.*

IEC. The bill increases General Fund expenditures in the IEC by \$237,574 and 1.4 FTE in FY 2016-17 and by \$252,200 and 1.5 FTE in FY 2017-18. The fiscal note assumes that the IEC will hire, rather than retain, legal counsel and will bring two part-time senior level attorneys on staff to assist with the investigation and prosecution of complaints and the advisory function of the IEC. Both in determining whether or not a complaint is frivolous and gathering information to prosecute non-frivolous complaints, the IEC requires an additional 160 hours of investigatory services, billed at \$100 per hour. Costs for personal services and FTE have been prorated in the first year to account for the General Fund pay date shift.

Department of Law. The bill reduces General Fund expenditures in the Department of Law by \$171,018 and 1.0 FTE, as the department will no longer need the legal resources to support the IEC.

Judicial Department. In its expanded capacity for rulemaking under the bill, the IEC may promulgate rules subject to judicial review. Requests for judicial review of these rules may increase workload in trial courts by a minimal amount. No increase in appropriations is required.

Centrally appropriated costs. Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. The centrally appropriated costs subject to this policy are estimated in the fiscal note for informational purposes and summarized in Table 2.

Table 2. Centrally Appropriated Costs Under HB16-1216		
Cost Components	FY 2016-17	FY 2017-18
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$12,210	\$12,239
Supplemental Employee Retirement Payments	16,021	18,301
TOTAL	\$28,231	\$30,540

Local Government Impact

Local government revenue may increase by a minimal amount under the bill. By specifying penalties for which a local official or employee is liable to the local government, the bill may increase the damages recovered by local governments in such cases. The number of ethics cases with monetary penalties is expected to be small, affecting only a small number of local governments in any fiscal year.

Effective Date

The bill takes effect July 1, 2016, and applies to offenses committed on or after this date.

State Appropriations

In FY 2016-17, the bill requires a General Fund appropriation of \$209,343 and an allocation of 1.4 FTE to the IEC and a reduction in General Fund appropriations of \$171,018 and 1.0 FTE in the Department of Law.

Departmental Difference

The IEC estimated an increase in expenditures of \$175,000-\$630,000 to retain legal counsel for prosecution of complaints, \$40,000 for investigatory services, and \$630,000 to retain legal counsel for advisory services. The IEC believes that the bill will result in a substantial increase in workload from additional complaints filed and prosecuted. The IEC maintains that in order to find attorneys with the legal expertise required for both prosecutions and advisory work, it must retain counsel at an hourly rate of \$350, rather than hire staff. The fiscal note assumes that the bill will not result in a large increase in complaints filed and finds that any increase in workload can be accomplished by two-part time attorneys working together with existing staff.

State and Local Government Contacts

Information Technology

Judicial

Law